

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWMAN DIVISION**

FLOYD JACKSON,	:	
	:	
Plaintiff	:	CIVIL ACTION FILE
	:	NO. 3:09-CV-76-JTC
v.	:	
	:	
COWETA COUNTY GOVERNMENT,	:	
COWETA COUNTY'S SHERIFF'S	:	
OFFICE	:	
	:	
Defendant	:	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR
LEAVE OF COURT TO AMEND COMPLAINT FOR DAMAGES**

COMES NOW Coweta County, Georgia, ("Coweta County") and Coweta County Sheriff's Office (the "CCSO") (collectively "Defendants"), Defendants in the above-styled civil action, and file this their Response to Plaintiff Floyd Jackson's ("Plaintiff") Motion for Leave of Court to Amend Complaint for Damages, respectfully showing the Court as follows:

I. STATEMENT OF FACTS

As the motion seeks only to amend the parties named in Plaintiff's Complaint for Damages (the "Complaint"), Defendants will not address any facts which occurred before Plaintiff filed the Complaint.

On or about July 2, 2009, Plaintiff filed the Complaint in this Court and alleged that he was discriminated against under the Americans with Disabilities Act (“ADA”) due to his alleged disability. Plaintiff named “Coweta County Government, Coweta County Sheriff’s Office” as defendant. Since the Complaint refers to defendant in the singular form and defendants in the plural form Defendants were unsure as to whether the Complaint was filed against only Coweta County or whether the Complaint included the CCSO as a defendant. Therefore, out of an abundance of caution Defendants elected to have the CCSO and Coweta County answer the Complaint. Coweta County and the CCSO filed their separate answers on or about November 6, 2009.

Plaintiff has now filed this motion to amend the Complaint to change the named defendants to Coweta County, Georgia and Mike Yeager, individually and in his official capacity as the Sheriff of Coweta County.

II. ARGUMENT AND CITATION OF AUTHORITY

Without admitting that any party has been properly sued or served, Defendants do not object to Plaintiff’s Motion to change the named defendants from Coweta County, Government to Coweta County, Georgia and Coweta County Sheriff’s Office to Coweta County Sheriff Mike Yeager in his official capacity.

Defendants do, however, object to Plaintiff's motion to amend to now include Sheriff Yeager in his individual capacity as a party to this lawsuit.

It is well established that the ADA "does not provide for individual liability, only for employer liability." Mason v. Stallings, 82 F.3d 1007 at 1009 (11th Cir. 1996); See Brooks v. CSX Transportation, Inc., 2009 U.S. Dist. LEXIS 89474 (M.D. Fl. Sept. 29, 2009); Mitchell v. Overbey, 2005 U.S. Dist. LEXIS 17489 (M.D. Ga. Aug. 17, 2005); Rylee v. Chapman, 316 Fed. Appx. 901 (11th Cir. 2009). "Individual defendants are not amenable to private suit and personal liability for employment discrimination under the Americans With Disabilities Act of 1990." Brooks, 2009 U.S. Dist. LEXIS 89474. "Any claims seeking to impose individual liability pursuant to these [ADA] statutes are properly dismissed as a matter of law." Id.

The 11th Circuit first addressed the issue of individual liability arising out of an ADA claim in Mason v. Stallings. Mason, 82 F.3d 1007. In Mason, the plaintiff alleged that he was not properly accommodated under the ADA by his employer Cherokee County. Id. at 1009. The plaintiff brought action against, among others, the Cherokee County Commissioners in both their official and individual capacities. Id. The Mason Court held that the "Disabilities Act does not

provide for individual liability” and, therefore, the County Commissioners could not be held liable for the plaintiff’s ADA claims in their individual capacity. Id.

In the case at bar, Plaintiff seeks to amend the Complaint to name Sheriff Yeager in his individual capacity as a party to this lawsuit. As set forth above, the ADA does not provide for individual liability. See Mason v. Stallings, 82 F.3d 1007 at 1009 (11th Cir. 1996); Brooks v. CSX Transportation, Inc., 2009 U.S. Dist. LEXIS 89474 (M.D. Fl. Sept. 29, 2009); Mitchell v. Overbey, 2005 U.S. Dist. LEXIS 17489 (M.D. Ga. Aug. 17, 2005); Rylee v. Chapman, 316 Fed. Appx. 901 (11th Cir. 2009). In the Complaint, Plaintiff offered no grounds for why Sheriff Yeager in his individual capacity should be named as a party to this lawsuit and, in fact, did not address Sheriff Yeager in his individual capacity at all. Likewise, in Plaintiff’s motion to amend, no basis was given for why Sheriff Yeager in his individual capacity should be named as a party. Plaintiff simply stated “[i]n this civil suit, Plaintiff also seeks to hold the County Sheriff individually liable based on willful conduct sought to intentionally harm and deprive him of his rights afforded by the ADA.” Pl.’s Mot. Amend p.7 ¶1. Plaintiff gave no further explanation as to why Sheriff Yeager is liable in his individual capacity, nor did Plaintiff present any argument as to how this case differs from the case law set forth above. Even if Plaintiff did make such specific allegations, the above-cited

law precludes any suit against Sheriff Yeager in his individual capacity.

Accordingly, Sheriff Yeager in his individual capacity should not be named as a defendant in this lawsuit.

III. CONCLUSION

For the reasons set forth above, Defendants respectfully submit that Sheriff Yeager in his individual capacity cannot be held liable for Plaintiff's claims under the ADA and that Plaintiff's motion to amend the Complaint to include Sheriff Yeager in his individual capacity as a defendant should therefore be denied.

Respectfully submitted this 23rd day of December, 2009.

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COWETA COUNTY GOVERNMENT,	:	
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Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2009, I electronically filed
“DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR LEAVE OF
COURT TO AMEND COMPLAINT FOR DAMAGES” with the Clerk of Court
using the CM/ECF system which will automatically send email notification of such
filing to the following attorneys of records:

Tameka A. West, Esq.
The West Legal Group, P.C.
2242 Mt. Zion Road
Jonesboro, Georgia 30236

This 23rd day of December, 2009.

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